

REMARKS/ARGUMENTS

Claims 1-34 were previously canceled by Applicant. Claims 35-40 are rejected under the judicially created doctrine of double patenting over claims 1-39 and 1-16 of U.S. Patent No. 5,447,939 and 5,801,184, respectively. Claims 35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Sham et al. (5,151,438).

AMENDMENTS TO THE CLAIMS

An Office Action was issued in the subject application on July 29, 2004, in which: claims 35-40 were rejected under the judicially created doctrine of obviousness-type double patenting; and

claims 35-40 were rejected under 35 U.S.C. §102(b) as being anticipated by Sham et al (U.S. Patent No. 5,151,438).

Summarizing the claim amendments, claim 36 has been amended to exclude guanosine and inosine pranobex. A terminal disclaimer in compliance with 37 CFR 1.321(c) is provided to overcome the nonstatutory double patenting rejection on claims 35-40. Claims 35-40 remain in the application. No new matter was introduced as a result of this amendment. Applicants respectfully request that the amendments to the claims be entered and considered. Applicants respectfully submit that the application is in condition for allowance.

DOUBLE PATENTING

Claims 35-40 stand rejected under the judicially created doctrine of obviousness-type double patenting. A terminal disclaimer in compliance with 37 CFR 1.321(c) is hereby submitted to overcome the nonstatutory double patenting rejection over claims 1-39 and 1-16 of U.S. Patent No. 5,447,939 and 5,801,184, respectively.

REJECTIONS UNDER 35 U.S.C. §102(b)

Claims 35-40 stand rejected as being anticipated by U.S. Patent No. 5,151,438 to Sham et al. Claim 36 has been amended to remove guanosine and inosine pranobex from the Markush group. By this amendment, the rejection under 102(b) is moot and the Examiner is respectfully requested to withdraw the rejection.

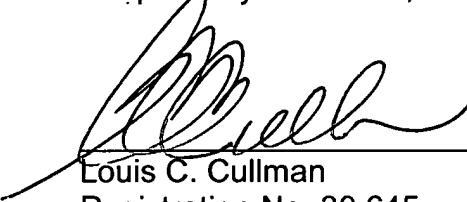
Claims 35-40 remain in the application and Applicants believe that the application is in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

The Examiner is respectfully invited to contact the undersigned if there are any issues which remain, preventing the allowance of the application.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

Dated: 12/7/04


Louis C. Cullman
Registration No. 39,645
CUSTOMER NUMBER: 45,200

PRESTON GATES & ELLIS LLP
1900 Main Street, Suite 600
Irvine, California 92614-7319
Telephone: (949) 253-0900
Facsimile: (949) 253-0902